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ABSTRACT

In the Washington State juvenile justice system, serious or repeat offenders receive the full panoply of due process rights and procedures, with the exception of jury trials; minor offenders are diverted to community boards that require community service or victim restitution; and status offenders are removed from the courts' jurisdiction and treated in a voluntary social service setting. Washington has adopted a presumptive sentencing scheme which allows juvenile court judges to step outside guidelines and invoke harsher or more lenient sanctions due to extraordinary circumstances. A 3-year assessment of the Washington juvenile code found that, with the exception of documented instances in which a delinquent's status offense records, sex, and/or race sometimes resulted in harsher sentences when judges invoked their right to step outside the sentencing scheme, the new law worked to keep both youths and the system accountable. The post-reform era had a substantially better record of holding juveniles accountable for their offenses. Although the overall level of severity of sanctions was reduced after the legislation went into effect, there was an increase in the certainty that a sanction of some kind would be imposed. (NRB)

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WASHINGTON STATE JUVENILE JUSTICE CODE

An Experiment in Justice

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WASHINGTON STATE JUVENILE JUSTICE CODE

AN EXPERIMENT IN JUSTICE

Prepared for

The Office of Juvenile Justice
and Delinquency Prevention

U.S. Department of Justice

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April, 1984

In 1977, after ten years of debate, the Washington State legislature passed a juvenile code that abandoned the notion of social and psychological rehabilitation of juveniles as its principle goal. The new law aimed "to hold offenders accountable for what it does to juveniles and to bring about a more uniform, equitable system of justice."[1]

This experiment in justice has been heralded as the most unusual and innovative change in juvenile justice since the historic court decisions of the late 1960s (Gault, Winship, McKeiver v. Pennsylvania)[2]. And rightly so. Washington legislators successfully sidestepped the punishment-rehabilitation argument that characterizes most criminal code discussions in this country. But whether this innovation will serve as a blueprint for other states seeking to restore public confidence in their juvenile justice systems, while promoting a doctrine of fairness of children in trouble with the law, is debatable.

The heated polemics of punishment and rehabilitation advocates have diminished public understanding of alternatives that strike a balance between public safety and the special needs of youth. "Whether this reform endures will depend, at least in part, on how well its basic philosophical principles are understood, and on whether the positive impacts...can endure through time,"[3] conclude the authors of a three-year sudy to assess Washington's juvenile law.*

Our purpose in this discussion is to outline the philosophical underpinnings of the Washington juvenile code, its legislative history, and its documented effects.

The Washington juvenile code is the truest application of the justice philosophy that exists in any juvenile system, and perhaps in any adult system, within the United States.[4] Both punishment and rehabilitation systems contemplate the future: the first aims to deter the individual and the latter seeks to change the individual. A justice model, however, looks only at the past. "A person should be punished for what he or she already has done, according to the proponent of this approach, not for what he or she might do. The justice model is based on the idea of limiting punishment strictly to

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*An Assessment of Juvenile Justice System Reform in Washington State by Anne L. Schneider, Department of Political Science, Oklahoma State University, Stillwater, OK 74078, 405/624-5569 and Donna D. Schram, Urban Policy Research, 370 Maynard Building, 116 - 1st Avenue S., Seattle, WA 94104, 206/682-4208.
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that which is deserved. It is the act, not the individual, that is important."[5]

In Washington State, serious and/or repeat juvenile offenders receive the full panoply of due process rights and procedures, with the exception of jury trials. Judicial discretion is limited by sentencing guidelines designed to ensure the proportionality of court-imposed sanctions. Minor offenders are diverted to community boards that require community service or victim restitution. Status offenders and other children in conflict with their parents are removed from the courts' jurisdiction altogether and treated in a voluntary social service setting.

The Washington State legislature first looked at the issue of juvenile court jurisdiction over status offenders in 1973, prior to the passage of the federal Juvenile Justice and Delinquency Prevention Act (1974), which called for the deinstitutionalization of this group. At that time, then-Governor Dan Evans backed a measure to remove nonoffenders from the court process. The bill failed, and in 1976 another measure was introduced that prohibited some status offenders--Children in Need of Supervision--fr[illegible] incarceration. This effort was also defeated, but in 1976 a bill, with significant compromises called for by the Superior Court judges, who had successfully blocked the earlier proposals, did pass.

When the status offender's portion of the juvenile code was revised again in 1977, as part of a complete revision of the law, IJA/ABA Standards for Non-criminal Behavior were incorporated into the changes. However, portions of the 1976 law allowing for some nonoffenders to be committed for up to 30 days for "diagnosis and treatment" were included, then struck down in 1979 when amendments to the code were introduced.

Under the revised and amended juvenile code, parents [illegible]y still file runaway complaints with the police, who then take the child to a crisis-residential center or return him or her home. The parent is then contacted by a social worker who provides follow-up counseling or foster ca[illegible], if required.

In the juvenile code assessment, the following conclusions were reached regarding the impact of the law on status offenders.

-- The reform legislation removed status offenses from the jurisdiction of the juvenile court and established a voluntary service-delivery system within the state Department of Social and Health Services. This part of the legislation resulted in the complete elimination of status offense referrals to juvenile court and the virtual elimination of referrals to detention even though a 24-hour confinement period was still permitted.

-- The divestiture approach was more effective in eliminating the referral of status offenses than it was in the eliminating the referral of status offenders. In the post-reform system, runaways were more likely to be contacted for delinquent acts than they had

been prior to the change in the law and even though there was a decline in the proportion of runaways referred to juvenile court (for something, not necesarily a status offense) the referrals did not drop to zero. More disturbing, perhaps, was the finding that delinquents who have a history of status offenses received more severe sanctions in the post-reform system than did delinquents without a history of status offense misbehaviors.[6]

During the legislative debate on the juvenile code, lawmakers focused on diversion and sentencing guidelines. The status offender portion of the law was considered less controversial. However, when the code was enacted, it was the nonoffender requirements of the law that attracted the most attention. "After the initial reform law went into effect," says the study, "there was widespread belief throughout the state that law-enforcement officers were not dealing with runaway cases and/or that the crisis-intervention service workers were being overly restrictive in their intake criteria."[7] The 1979 legislature fine-tuned this section of the law to accommodate many of these complaints, primarily from parents' groups.

Unlike DSO and sentencing guidelines for offenders, diversion programs received widespread support from professionals and citizens, and proved to be the least controversial requirement of the law.

No other state has established as extensive a community-based diversion program for minor offenders as has Washington State. Each unit consists of one or more professionals or lay community members, many of whom volunteer for the jobs. Together, the juveniles and the diversion unit consider the juvenile's offense and past history, and enter into an agreement. Conditions of the agreement may include restitution to the victim, community-service work, or an informational class on alcohol and drug abuse. Options like community service are designed to show offenders that if they take something out of the community, they must put it back.

In some diversion programs, as many as 90 percent of all offenders never come through the system again. A diverted youth is returned to court if an agreement cannot be reached or if the youth fails to comply with the agreement. This group accounts for a small fraction of all diverted youths.

The assessment came to the following conclusions regarding diverted youths:

-- Non-violent first offenders and chronic minor property offenders were less likely to be incarcerated under the new system, but more apt to be required to pay restitution, do community service or be on probation.

-- The practice of informally adjusting cases at juvenile court intake, which was common in Washington as it is throughout the United States, was completely eliminated and in its place a formalized diversion program was established. The diversion system, consistent with the intent of the legislation, does not provide treatment or services to

> youths but, instead, seeks to hold them accountable through the payment of restitution to crime victims or through community service work.[8]

In support of sentencing guidelines for juvenile offenders, then-Representative Ron Hanna, Chair of the House Institutions Committee, made the following statement:

> Throughout the state, some violent felony cases are disposed of administratively, while non-violent felonies and misdemeanors are officially adjudicated. Such decisions, based not so much on what a child has done but on who he or she is, are not only unfair, but are made at the expense of public protection.[9]

Representative Hanna's statement echoed a major concern of legislators about to overhaul the state's juvenile court guidelines and procedures. To remedy such administrative and judicial discrepancies, legislators adopted a presumptive sentencing scheme that established a fixed range of sanctions based on a convicted youth's age, offense, and criminal history. These elements, computed on a point matrix, also determined if a case would be diverted or filed in court, at the time a youth entered the system.

Presumptive sentencing differs from mandatory sentencing, in that a juvenile court judge can step outside the guidelines, and invoke a harsher or more lenient sanction due to some extraordinary circumstance. These exceptions, called "manifest injustice," must be documented by the court and are the only sentences subject to appeal.

The sentencing standards of the Washington juvenile code generally follow those recommended by the IJA/ABA Joint Commission, but differ in two respects. Whereas the IJA/ABA standards of uniformity and proportionality apply at the time of sentencing, discretion, guided by the "needs of the youth," governs other points in the system. The Washington code applies the principles of uniformity and proportionality throughout the system. The IJA/ABA approach proposes controls on judicial discretion only in terms of setting maximum sentences. The Washington juvenile code sets minimum sentences as well.[10]

The three-year assessment reached the following conclusions regarding the presumptive sentencing scheme of Washington's juvenile code:

-- Sentences in the post-reform era were considerably more uniform, more consistent, and more proportionate to the seriousness of the offense and the prior criminal record of the youth than were sentences in the rehabilitation system which existed before 1978.

-- There was a marked increase in the use of incarcerative sanctions for the violent and serious/chronic offenders: in the pre-reform era 52 percent of these cases received incarcerative sanctions and 37 percent were informally adjusted; in the post-reform period, 90

percent were incarcerated, 10 percent were placed on probation, and none was adjusted or diverted.

-- Compliance with the sentencing guidelines was extremely high. In the three jurisdictions from which individual-case data were obtained, approximately 95 percent of all cases were sentenced within the presumptive ranges.

-- In spite of the high rate of compliance with the guidelines and the enormous increase in uniformity of decisions, the analysis revealed that differential handling of females and minorities still existed in some jurisdictions for certain kinds of decisions. On the whole, the effect was much more pronounced for females than for minorities. The female offenders in the three-area study were more likely than males to be diverted (post) or to have their cases adjusted (pre) but, if they were not diverted or adjusted, the females were more likely to be committed. The analysis also showed that these effects were not created by the new approach; rather, the pattern of differential handling that existed in the pre-reform system tended to be perpetuated after the new law went into effect.[11]

Have the consequences of implementation matched the legislative intent of keeping both youths and the system accountable? Generally speaking, yes. With the exception of documented instances in which a delinquent's status offense records, sex, and/or race sometimes resulted in harsher sentences when judges invoked their right to step outside the sentencing scheme, the new law worked as legislators had hoped.

Regarding the issue of accountability, the three-year assessment reached the following conclusions:

-- The post-reform era had a substantially better record of holding juveniles accountable for their offenses. Depending upon which definitions and standards were used to establish "accountablity," the post-reform system either doubled or tripled the proportion of youths held accountable. Nevertheless, approximately one-third of all youths contacted by the police that who apparently should have been accountable, were not. Their cases either dropped out of the system due to poor record-keeping or at the discretion of police or other officials.

-- The overall level of <u>severity</u> was actually reduced during the first two years after the legislation went into effect but there was an increase in the <u>certainty</u> that a sanction of some kind (restitution, community service, probation) would be imposed.

-- The analysis of recontacts by law enforcement officials (recidivism) indicated that there was an increase in the proportion of youths contacted for subsequent offenses in the post-reform time period compared with the pre for two of the three jurisdictions in which

this question was examined. It is not possible however to determine whether the increase was produced by an increased rate of recidivism or by a change in law enforcement practices. All of the increase was produced by increased contacts for misdemeanors rather than felonies. The change might be a result of increased law enforcement confidence in the system which resulted in an increased incentive to record incidents committed by the youths or it could have been produced by increased delinquent activity on the part of the juveniles. Although the authors of this study believe that the former is more likely than the latter, the issue needs further research and clarification.[12]

One of the most persistent arguments put forth by rehabilitationists who opposed the Washington code was that a justice model discounts and inhibits treatment for troubled youngsters. However, as the new law began to take hold, some professionals noted the merits of a system that divorced accountability and treatment.

The director of the state's division of juvenile rehabilitation, which oversees Washington's training schools, stated: "I think they (rehabilitation and accountability) complement one another. I think it's a much fairer, realistic model to say we're going to be together, how do we want to spend it. Then you can get kids to look at their behavior. If there's one thing that kids hate to do, it's waiting for an answer. The presumptive sentencing model gives them an answer to the most important question that's on a kid's mind: When I am going to get out?"[13]

Some county detention centers also experienced an increase in their ability to provide meaningful counseling and instruction for youths detained for specific periods of time under the new law.

One juvenile court administrator remarked: "The typical youngster who is now booked in and stays in detention is a repeat offender with a felony violation. Under the old law, a third of our population spent a day or two for being drunk and disorderly or for a minor drug or shoplifting charge...We test all the kids within 24 hours for reading, math, and spelling. About half our kids are dropouts. After the testing we do remedial work with them. If the kid is here for a long time and can do regular school work,, we work closely with the school district. We also focus on attitudes as well as skills. We do some vocational exposure and GED preparation.[14]

It is worth noting that many detertion centers lacked the funds to program for detainees held for longer periods of time under the new law. It was not until the state Supreme Court ruled that all children held in detention have a constitutional right to an education in Tommy P. v. Spokane County that more comprehensive school programs were implemented statewide.

The Superior Court judge stated in his final ruling that: "Teachers in the detention center are able to teach basic educational skills and raise detainees' achievement levels an average of approximately three years in reading, approximately one year in spelling and approximately one year in

math." The judge also stated that: "The administrators and employees of the Spokane facility consider the education program to be the most important program they offer. The program is viewed as the best method of providing security and reducing disciplinary problems because it is the setting that children are most familiar with, other than their own family setting...It has been shown that of 121 incident reports at the detention center during the months of January, 1980 through May, 1981, none occurred during the hours the school program was in operation."[15]

Critics of presumptive sentencing predicted that limits on judicial discretion would lead to overcrowding in the state's training schools. The law, however, appears to have capped institutional population by focusing on the serious offenders. As one prosecutor comments: "[The code] identifies and targets people with criminal histories, while taking out the great majority of people who are not serious problems, and [the law] focuses on people who need to be addressed by the court."[16] And because the system responds to this population, Washington juvenile courts continue to handle violent juvenile offenders, unlike many states, which now automatically waive those youngsters to the adult system.

The fact that a debate on the leniency and harshness of particular sentences is taking place is remarkable in itself. Under the new law, for the first time a framework exists in which the public can comment, through legislative channels, on what kind of consequence is appropriate for, say, a 16-year-old second-time burglar.

Washington's experiment in justice opened the court process to public discussion. No longer are the juvenile court and its decisions shrouded in secrecy. Above all, the law has shown that citizen involvement is a necessary forerunner to rebuilding confidence in the state's juvenile justice system.

FOOTNOTES

[1]Anne L. Schneider, Donna D. Schram, Jill G. McKelvey, David B. Griswold, Legislative History, Philosophy and Rationale of the Washington (State) Juvenile Justice Code (Eugene, Oregon: Institute of Policy Analysis; Seattle, Washington: Urban Policy Research, 1982), p. 65.

[2]Anne Schneider and Donna Schram, Executive Summary: An Assessment of Juvenile Justice System Reform in Washington State, (Eugene, Oregon: Institute of Policy Analysis, 1983), p. i.

[3]Ibid., p. viii.

[4]Ibid., p. 10.

[5]Anne L. Schneider, et al., Legislative History, Op Cit., p. 6.

[6]Anne Schneider and Donna Schram, Executive Summary, Op Cit., p. vii, viii.

[7]Anne L. Schneider and Donna D. Schram, A Compilation of Summaries and Abstracts Produced by the Assessment of the Washington State Juvenile Justice Code (Eugene, Oregon: Institute of Policy Analysis; Seattle, Washington: Urban Policy Institute, 1981), p. 22.

[8]Anne Schneider and Donna Schram, Executive Summary, Op Cit., p. vi, vii.

[9]Anne L. Schneider, et al., Legislative History, Op Cit., p. 21.

[10]Anne L. Schneider and Donna D. Schram, A Compilation, Op Cit., p. 24.

[11]Anne Schneider and Donna Schram, Executive Summary, Op Cit., p. vi, vii.

[12]Ibid., p. vi, vii, viii.

[13]Bruce Betz, "Jerry Wasson: An Emphasis on Community Control," The Catalyst, (July-August 1981), p. 4.

[14]Bruce Betz, "Juvenile Court Director Lee Fist Puts Education Up Front," The Catalyst (July-August 1981), p. 4, 5.

[15]Philip A. Faris, Judge, Superior Court of Washington State, Findings of Fact and Conclusions of Law, Tommy P. v. Spokane County, p. 5, 6.

[16]Bruce Betz, Kid Crime: Stunning Decline," The Weekly, Seattle's Newsmagazine, 5 August 1982, p. 8.